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August 28, 1996

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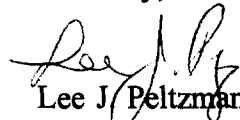
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Re: MM Docket No. 96-125
RM-8807, 8861
Hilton and Albion, New York

Dear Mr. Caton:

Transmitted herewith, on behalf of Albion Broadcasting Associates, is an original and four (4) copies of its Comments on Counterproposal in the above-referenced rule making. Please contact the undersigned should the Commission have any questions regarding this filing.

Sincerely,


Lee J. Peltzman

Counsel for

ALBION BROADCASTING ASSOCIATES

Enclosure

**Before The
FEDERAL COMMUNICATIONS COMMISSION**
Washington, D.C. 20554

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In the matter of)	
)	
Amendment of Section 73.202(b))	MM DOCKET NO. 96-125
FM Broadcast Stations)	RM-8807, 8861
(Hilton and Albion, New York))	
To: Chief, Allocations Branch		
Mass Media Bureau		

**COMMENTS
ON
COUNTERPROPOSAL**

Albion Broadcasting Associates ("ABA"), by its attorney, hereby submits its Comments on the counterproposal to allot Channel 238A as a first service to the community of Albion, New York. In support of its position, ABA states the following:

This rule making proceeding originated from a *Notice of Proposed Rule Making*, 11 FCC Rcd. 6674, 6675 (1996), wherein the Commission proposed to allot Channel 238A to the community of Hilton, New York, as that community's first local aural transmission service. ABA filed its counterproposal seeking to allot the same channel to Albion as that community's first local aural service.^{1/} ABA pointed out that Albion was a larger and more significant community in that it has an 11% greater population than Hilton (6,624 vs. 5,886) and is also the county seat of Orleans County, a county having no local broadcast stations.

^{1/} The Commission accepted ABA's Albion counterproposal by Public Notice (Report No. 2148), released August 14, 1996.

In its Reply to Counterproposal, Hilton Broadcasting ("Hilton Broadcasting"), attacks ABA's counterproposal. However, none of the assertions posited by Hilton Broadcasting are legally correct and support its position. For example, while it admits that Albion has well over 700 more people than does Hilton, Hilton Broadcasting takes the position that Albion receives more commercial radio signals,^{2/} and that, therefore, Hilton has a greater need for a first local broadcast service. Hilton Broadcasting cites no FCC precedent in support of its position, nor can it, because there is none. ABA demonstrated in its counterproposal that the community of Albion is preferred under the Commission's *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), since ABA proposes a first local aural service to a more important and more populated community than does Hilton Broadcasting.^{3/} Hilton Broadcasting does not demonstrate that Hilton fails to receive sufficient broadcast signals and should therefore be preferred under the FCC's allotment policies. Therefore, its claim that Albion receives more commercial radio signals than Hilton is not only unsupported, but also legally irrelevant.

Hilton Broadcasting also makes the argument that the community of Hilton is more likely to be able to support financially a new station via advertising than the community of Albion. Again, not only is Hilton Broadcasting's argument unsupported, but it is also legally incorrect. The Commission has long held that economic feasibility issues are not to be considered by the Commission in the allotment or licensing context. *See FM Channel Assignments, Policies*

^{2/} Nowhere in its Comments does Hilton Broadcasting specify the amount of signals received by Hilton or Albion.

^{3/} Hilton Broadcasting points out that first local services does not include service to the county in which a community is located. However, under the Commission's *Revision of FM Assignment Policies and Procedures, supra*, the Commission may consider this factor under the "other public interest matters" priority.

Regarding Detrimental Effects of Proposed New Broadcast Stations On Existing Stations, 3 FCC Rcd. 638 (1982), *recon. denied*, 4 FCC Rcd. 2276 (1989); *Cheyenne, Wyoming*, 8 FCC Rcd. 4473 (1993).

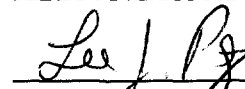
Hilton Broadcasting also argues that the proposal to allot Channel 238A to Albion will be short spaced to two Canadian FM stations whereas its proposal would cause interference to only one Canadian station. In fact, the Commission's *Notice of Proposed Rule Making* states at paragraph 2 that the Hilton Broadcasting proposal would be short spaced to two Canadian stations (CKDS-FM and CJBC). Moreover, nowhere does Hilton Broadcasting state that the ABA proposal is technically incorrect. Thus, again, its argument is not only unsupported but legally ineffective.

For the above reasons, ABA once again submits that the Commission should allot Channel 238A to the community of Albion, New York, as that community's first local aural service. As noted earlier, in the event the Commission does allot Channel 238A to Albion, ABA will file an application for construction permit and, when it is granted, immediately construct its station and commence broadcast operations.

Respectfully submitted

ALBION BROADCASTING ASSOCIATES

By:



Lee J. Peltzman
Its Counsel

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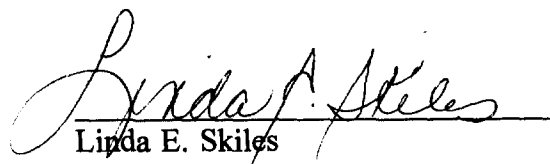
August 28, 1996

CERTIFICATE OF SERVICE

I, Linda E. Skiles, Office Administrator, of the law firm of Shainis & Peltzman, do hereby certify that copies of the foregoing document were sent, via First Class Mail, this 28th day of August, 1996, to the office of the following:

Leslie K. Shapiro
Federal Communications Commission
2000 M Street, N.W. - Room 564
Washington, D.C. 20554

Mr. Alan S. W. Bishop
d/b/a Hilton Broadcasting
679 Furman Road
Fairport, NY 14450


Linda E. Skiles